

## 46 Am. Jur. 2d Judges § 216

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### Judges

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### IX. Disqualification to Act in Particular Case

#### F. Revocation or Removal of Disqualification

## § 216. Revocation of determination of disqualification of judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

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### Forms

Forms relating to orders and judge disqualification or withdrawal, generally, see Am. Jur. Pleading and Practice Forms, Judges; Am. Jur. Pleading and Practice Forms, Criminal Procedure [[Westlaw®\(r\) Search Query](#)]

In the absence of a statute to the contrary, where a timely affirmative showing is made that there was no valid disqualification or the disqualification has been removed, a judge who entered an order that the judge is disqualified may reassume jurisdiction over the matter,<sup>1</sup> as long as the judge first revokes the prior order of disqualification.<sup>2</sup> In the absence of an affirmative showing of valid grounds, the judge may not sua sponte revoke the disqualification.<sup>3</sup>

If a motion or affidavit of prejudice is defective and a judge erroneously self-disqualified, the judge may, on making a proper record, resume jurisdiction if such action is taken promptly and not waived by the parties, unless there is good cause for disqualification.<sup>4</sup> Furthermore, because a presumption arises, by reason of the judge's prior order of disqualification, of the existence of the factual reason for such disqualification, where the disqualified judge revokes the order and objection is made to such revocation, the record must clearly reveal the facts upon which the revocation is made.<sup>5</sup>

In some jurisdictions, a trial judge may not reconsider an order of disqualification, even if entered in error, as the order deprives the judge of any further authority to act in the case.<sup>6</sup>

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Footnotes

- 1 Bank of Marlinton v. Pocahontas Development Co., 88 W. Va. 414, 106 S.E. 881 (1921).
- 2 Wilson v. State, 521 N.E.2d 363 (Ind. Ct. App. 1988).
- 3 Wilson v. State, 521 N.E.2d 363 (Ind. Ct. App. 1988); Dotson v. Burchett, 301 Ky. 28, 190 S.W.2d 697, 162 A.L.R. 636 (1945).
- 4 State ex rel. Mosshammer v. Allen Superior Court No. 3, 246 Ind. 366, 206 N.E.2d 139 (1965).
- 5 Dotson v. Burchett, 301 Ky. 28, 190 S.W.2d 697, 162 A.L.R. 636 (1945).
- 6 Jenkins v. Motorola, Inc., 911 So. 2d 196 (Fla. 3d DCA 2005); Tatum v. Orleans Parish School Bd., 894 So. 2d 1180 (La. Ct. App. 4th Cir. 2005).

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